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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,815	10/20/2003	Taro Ikeda	03500.017675	2611
5514	7590	11/02/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				LEE, PETER
ART UNIT		PAPER NUMBER		
		2852		

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/687,815	IKEDA ET AL.	
	Examiner Peter Lee	Art Unit 2852	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) 7 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/18/03</u> .	6) <input type="checkbox"/> Other: ____ .

## **DETAILED ACTION**

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 1 of the current application is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/687813. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim one in the current application is seen to be broader and encompasses the limitations taught in claim one of application No. 10/687813. It is obvious to see that the "plurality of developing devices" taught in claim 1 of the application is satisfied by the first and second developer carrying members in the earlier application No. 10/687813.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kimura et al. (US pn 5258819).

Kimura teaches an image forming apparatus (abstract 1<sup>st</sup> sentence) comprising: a plurality of developing units (Fig. 1 parts 9M, 9Y, 9C) (ie. plurality of developing devices) for developing an electrostatic image formed on a photoconductive belt (Fig. 1A part 4) (ie. image bearing member); a revolver type developing device (Fig. 1A part 5) (ie. rotary member) that holds the plurality of developing units and rotated in a route including a developing position where the revolving device selectively positions any one of the developing units at a developing position (col. 4 lines 50-55 and col. 1 lines 28-35); wherein each of the developing units has a first developer carrying roller (Fig. 3 part 22Y, 22m, or 22C) and a second supply roller (Fig. 3 part 23) (ie. second developer carrying member) for carrying developer to said photoconductive belt.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuma et al. (US pn 5160969) in view of Kashiwabara (Japanese patent 11-2961).

Mizuma teaches an image forming apparatus (Fig. 6) comprising: Four separate developing containers (Fig. 6 parts 107, 109, 111, 113; note col. 14 lines 35-41) (ie. plurality of developing devices) corresponding to four separate colors to perform a color developing process with respect to the electrostatic latent image formed on the photosensitive body belt (Fig. 6 part 101) (ie. image bearing member); a rotating developing device (fig. 6 part 137) (ie. rotary member holding plurality of developing devices) for holding the four developing containers and bringing them to the proper first developing position (Fig. 6 reference P1; note col. 14 lines 35-41).

Mizuma does not teach the four developing containers having the claimed plurality of developer carrying members.

Kashiwabara teaches a first developer application means (fig. 1 part 30) and second developer application means (fig. 1 part 40) (ie. developer carrying members) for carrying developer to a photosensitive drum (fig. 1 part 2) (ie. image bearing member); an abutting member (ie. hitting member) is taught to be attached to one of the said developer application means to abut against the said photosensitive drum. When the abutting member (Fig. 6 part 47; paragraph [0025]) is attached around the second developer application means, the first developer application means is seen to have its non-contact distance to the photosensitive drum ensured (fig. 6 note space DG1), and the abutting means ensures the second developer application means a physical contact distance of DG2 from the photosensitive drum.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the single position developing device seen in Kashiwabara and put it into a multiple unit rotary apparatus as found in Mizuma. Combining a single toner device into a color image forming device is further supported in the fact that the reference invention taught by Mizuma that includes the multiple developing device rotary member also includes a second and separate developing device (fig. 6 part 151; Mizuma) specifically set aside for black developer (col. 14 lines 52-60). One of ordinary skill in the art would have been motivated to bring the dual developer application means setup as seen in Kashiwabara into the rotary device seen in Mizuma because the dual developer application means has the ability to develop more of the latent image on the image bearing member, thus increasing the image formation rate of the overall image forming apparatus (Kashiwabara [0002]).

By combining the two references, Kashiwabara into Mizuma, the remaining claims 4-6 will be taught. As mentioned above, when the abutting member (fig. 6 part 47) is attached to the second developer application means, the first developer application means is positioned so as not to contact said photosensitive drum. When putting the developing device taught by Kashiwabara into one of the developing units of Mizuma, the same characteristic will hold of the first developer application means not contacting the image bearing member even with the new found rotation of the device.

As to claim 5 and subsequent claims, if the double stacked toner developing unit taught by Kashiwabara were to be applied to a rotary type developing device as taught in Mizuma, then the limitation of the first developer application means (Kashiwabara fig. 6 part 30) and second developer application means (Kashiwabara fig. 6 part 40) performing a developer ooperation for

the electrostatic image on the photosensitive body belt (Mizuma fig. 6 part 101) (ie. image bearing member) in the named order will be taught. This is taught by having the rotary developing device in Mizuma having the double stacked developing means of Kashiwabara incorporated into the developing unit slots, and rotate clockwise from the same perspective as seen in Mizuma fig. 6. Then the first developer application means will arrive at the image bearing member earlier and therefore perform the developing operation before the second developer application means.

As to claim 6 and subsequent claims, by placing the twin developer application means unit found in Kashiwabara into the space provided for the developing units (Mizuna fig. 6 parts 107, 109, 111, 113) in the rotating type developing device of Mizuma so that the first developer application means is stacked on top of second developer application means and maintains the clockwise rotation found in Mizuma Fig. 6, the limitation of having the second developer application means arrive at the developing position later than the first developer application means will be satisfied.

#### ***Allowable Subject Matter***

3. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claimed subject matter could not be found in cited references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Lee whose telephone number is 571-272-2846. The examiner can normally be reached on mon-fri 9:00 am-5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Arthur Grimley can be reached on 571-272-2136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PL 10/25/04



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